

CHAPTER 54
RESIDENTIAL SERVICE CONTRACTS

191—54.1(523C) Purpose. The following chapter is promulgated for the purpose of administering the provisions of Iowa Code chapter 523C, the Iowa residential service contracts Act, relating to contracts or agreements between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

191—54.2(523C) Definitions. As used in the Act and this chapter, unless the context otherwise requires:

“*Act*” means Iowa Code chapter 523C, the Iowa residential service contracts Act.

“*Commission*” means the insurance division of the state of Iowa.

“*Commissioner*” means the commissioner of insurance for the state of Iowa.

“*Guarantee or warranty*” means:

1. Any written affirmation or written promise made by a manufacturer or seller in connection with the sale of structural components or any tangible personal property which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance over a specified period of time; or

2. Any undertaking by a manufacturer or seller made in writing in connection with the sale of structural components or any tangible personal property to refund, repair, replace or take other remedial action with respect to a product if the product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain for purposes other than resale.

“*Licensed service company*” means a service company which is licensed by the Iowa securities bureau pursuant to this Act.

“*Net worth*” means the excess of all assets over all liabilities including required reserves, computed in accordance with generally accepted accounting principles.

“*Person*” means an individual, corporation, trust, partnership or association, or any other legal entity.

“*Residential customer*” means any person (whether or not the person is the owner of the residential property) who purchases a service contract relating to a residential property from a service company.

“*Residential property*” means any single or multiple unit structure, including a house, townhouse, condominium, mobile home, or other habitable structure which is used primarily for residential purposes.

“*Residential service contract*” means a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

“*Service company*” means a person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

“*Service contract*” means a contract or agreement between a customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems intended to be attached to or installed in or on real property.

“*Structural components*” means the roof, foundation, basement, walls, ceiling or floors of a residential property.

191—54.3(523C) Title. The Act may be cited as the “Iowa residential service contracts Act.”

191—54.4(523C) Scope.

54.4(1) This chapter shall apply to any contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

54.4(2) This chapter shall apply when an agreement is made in this state or any offer to sell a residential service contract is made or accepted in this state. An offer to sell is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state.

191—54.5(523C) Application of insurance laws. The sale of a residential service contract by a licensed service company shall not be deemed to include the sale of insurance. Thus, unless the service company is otherwise engaged in the sale of insurance, the provisions of the insurance laws of this state shall not be applicable to any service company granted a license under the Act. However, this provision may not be construed to exempt any other warranties or service contracts other than residential service contracts, as defined herein, from the provisions of the insurance laws of this state.

191—54.6(523C) Exemptions. The provisions of the Act and this chapter do not apply to the following:

54.6(1) A performance guarantee given by a builder of a residence or the manufacturer or seller or lessor of residential property if no identifiable charge is made for the guarantee.

54.6(2) A service contract, guarantee or warranty between a residential customer and a service company which will perform the work itself and not through subcontractors for the service, repair or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems.

54.6(3) A contract between a service company and a person who actually performs the maintenance, repairs, or replacements of structural components, or appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems, if someone other than the service company actually performs these functions.

54.6(4) A service contract, guarantee or warranty issued by a retail merchant to a retail customer, guaranteeing or warranting the repair, service or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems sold by the retail merchant.

191—54.7 to 54.9 Reserved.

191—54.10(523C) Administration.

54.10(1) The Act shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the Act and management of the administrative staff of the Iowa securities bureau.

54.10(2) In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in the Act.

54.10(3) The superintendent of securities shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for the administration of the Act.

54.10(4) Upon request the commissioner may honor requests from interested persons for interpretative opinions.

191—54.11(523C) Misrepresentations of government approval.

54.11(1) It is unlawful for any service company granted a license under the Act to represent or imply in any manner that the licensee has been sponsored or recommended or that the licensee's abilities or qualifications have in any respect been passed upon by the Iowa securities bureau, the Iowa insurance division or the state of Iowa.

54.11(2) Nothing in this regulation prohibits a statement other than in a paid advertisement that a person has received a license pursuant to the Act, if the statement is true in fact and if the effect of the license's issuance is not misrepresented.

191—54.12(523C) Public access to hearings. Every hearing in an administrative proceeding shall be public.

191—54.13(523C) Public access to records.

54.13(1) The commissioner shall keep a register of all applications for licenses which are or have been effective under the Act and all censure, denial, suspension or revocation orders which have been entered under the Act. The register shall be open for public inspection.

54.13(2) Upon request and at reasonable charges the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document which is a matter of public record. In any administrative proceeding or prosecution under the Act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

54.13(3) Except as provided in the following subrule, all records maintained by the commissioner pursuant to the Act shall be a matter of public record and shall be made available for inspection or copying.

54.13(4) The commissioner may keep confidential certain information obtained in the course of an investigation or audit pursuant to Iowa Code chapter 22 as follows:

a. Information consisting of records which represent and constitute the work product of an attorney, which is related to litigation or claim made by or against a public body;

b. Information consisting of a peace officer's investigation report; provided, however, that the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual; or

c. Information consisting of a report to a governmental agency which, if released, would give advantage to competitors and serve no public purpose.

d. Information consisting of communications not required by law, rule, or procedure made to the insurance division or to any of its employees by identified persons outside of government, to the extent that the division could reasonably believe that those persons would be discouraged from making them if they were available for general public examination. Notwithstanding this provision:

(1) The communication is a public record to the extent that the person outside of the government making that communication consents to its treatment as a public record.

(2) Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

(3) Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the insurance division to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the insurance division to demonstrate that the disclosure of that information would jeopardize an investigation or would pose a clear and present danger.

54.13(5) If the commissioner determines that it is necessary or appropriate, in the public interest, the commissioner may share information with other administrators, regulatory authorities, or govern-

mental agencies or may publish information concerning a violation of the Act, this chapter, or an order issued pursuant to the Act or this chapter.

191—54.14(523C) Procedure for public complaints.

54.14(1) The commissioner may receive and process complaints made against any licensee, or any unlicensed individual or entity, which alleges certain acts or practices which may constitute one or more violations of the provisions of Iowa Code chapter 523C, the Iowa residential service contracts Act or this chapter. Any member of the public, or any federal, state, or local officials, may make and file a complaint with the commissioner. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa.

54.14(2) Complaints may be mailed or delivered to the following address: Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

54.14(3) All complaints shall be in writing and shall fully identify the complainant by name and address. If required by the Iowa securities bureau, complaints shall be made on forms prescribed and provided by that bureau.

54.14(4) Oral or telephone communications will not be considered or processed as complaints. However, any member of the administrative staff of the commissioner may make and file a complaint based upon information and belief, in reliance upon oral, telephone, or written communications received by the office of the commissioner.

191—54.15(523C) Fees.

54.15(1) The following fees are hereby established by the commissioner:

- a. Application packet \$ 5.00
- b. Audit fee (salaries and overhead) At Cost
- c. Certification \$ 5.00
- d. Duplicate license \$ 5.00
- e. Form approval fee \$100.00
- f. Form review fee (3% — MINIMUM) \$100.00
- g. License fee \$250.00
- h. License renewal fee \$250.00
- i. Name change \$ 10.00
- j. Photocopies of records (per page) \$ 0.50
- k. Printout of licensees \$ 10.00

54.15(2) A notice of license denial, or a notice of denial concerning a license renewal, shall be accompanied by a refund of 50 percent of the fee submitted with the application. All of the other fees are nonrefundable.

191—54.16(523C) Forms.

54.16(1) Content. Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319. The list which follows describes the forms which members of the public shall use when dealing with the bureau. Each direction shall be complied with and each question in the forms shall be answered in the same manner as if the forms and instructions were embodied in these rules.

FORM NUMBER	DESCRIPTION
R-1	Application For Service Company License. Used by applicants when filing for the issuance or renewal of a service company license under the Act.

- R-2 Affidavit Stating Satisfactory Net Worth and the Number of Contracts Issued. Used by applicants when filing for the issuance or renewal of a service company license under the Act, it constitutes Exhibit A of Form R-1.
- R-3 Affidavit Attesting to Reserve Account Balance. Used by applicants when filing for the issuance or renewal of a service company license under the Act, it constitutes Exhibit B of Form R-1.
- R-4 Surety Bond. Form of surety bond that must be filed prior to the issuance or renewal of a license.
- R-5 Annual Report. Used by licensees when filing their annual report under the Act.
- R-6 License Form.

54.16(2) Cost. The forms listed above are available upon request at reasonable charges prescribed by the commissioner. An application packet, containing one copy each of the Act, this chapter and all of the application and report forms, shall be available for a \$5 charge. Individual forms may be acquired as follows:

FORM NUMBER	QUANTITY	COST
R-1	10	\$1.00
R-2	10	\$1.00
R-3	10	\$1.00
R-4	10	\$1.00
R-5	10	\$1.00
R-6	10	\$1.00

191— 54.17 to 54.19 Reserved.

191—54.20(523C) Service company licenses. A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation and has procured a service company license from the Iowa securities bureau.

191—54.21(523C) Suspension or revocation of license.

54.21(1) The commissioner may suspend or revoke or refuse to renew the license of a service company for any of the following grounds:

- a. The service company violated a lawful order of the commission or any provision of the Act.
- b. The service company failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.
- c. The service company has without just cause refused to perform or negligently or incompetently performed services required to be performed under its residential service contracts and the refusal, or negligent or incompetent performance has occurred with such frequency, as the commissioner determines, as to indicate the general business practices of the service company.
- d. The service company has engaged in a prohibited act or practice prohibited by this chapter.
- e. The service company failed to maintain the surety bond required by Iowa Code section 523C.5.

- f. The service company failed to maintain the net worth required by Iowa Code section 523C.6.
- g. The service company failed to maintain the reserve account required by Iowa Code section 523C.11.
- h. The service company failed to maintain its corporate certificate of good standing.

54.21(2) Procedure. 191—Chapter 3 of the Iowa insurance division’s administrative rules, entitled “Administrative Hearings of Contested Cases,” in the Iowa Administrative Code shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, reviews, and licensing.

191—54.22(523C) Licenses not transferable. Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license and the purchaser of the business shall apply for a new license in their own name.

191—54.23 to 54.29 Reserved.

191—54.30(523C) Forms of contracts.

54.30(1) A residential service contract shall not be issued or used in this state unless it has been filed with the Iowa securities bureau and approved by the commissioner. If the commissioner fails to inform the service company of objections to the forms of residential service contracts within 30 days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with Iowa Code section 523C.7.

54.30(2) A form approval fee of \$100 shall be submitted for each form of contract filed with the Iowa securities bureau, unless the form of contract is filed with the annual report.

191—54.31 to 54.39 Reserved.

191—54.40(523C) Cessation of business—records. A licensed service company discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.

191—54.41(523C) Records.

54.41(1) All licensed service companies and independent depositories shall keep accurate accounts, books, and records concerning transactions regulated under the Act.

54.41(2) A licensed service company’s accounts, books, and records shall include:

- a. Copies of all contracts;
- b. The name and address of each residential customer;
- c. The name and address of each independent depository; and
- d. The dates and amounts of all receipts and expenditures.

54.41(3) A licensed service company shall retain all required accounts, books, and records pertaining to each residential service contract for at least two years after the specified period of time has expired.

54.41(4) All licensed service companies and independent depositories shall make all accounts, books, and records concerning transactions regulated under the Act available to the commissioner for the purpose of examination.

191—54.42(523C) Annual reports.

54.42(1) A licensed service company shall file with the Iowa securities bureau an annual report on the forms prescribed by the commissioner within 90 days of the close of its fiscal year.

54.42(2) One copy of each residential service contract to be issued or used in this state shall be filed for review as an exhibit(s) to the annual report and the licensed service company shall pay a form re-

view fee of 3 percent of the aggregate amount of residential service contract fees received in the state of Iowa during the preceding fiscal year, but the fee shall in no case be less than \$100.

54.42(3) Using the information obtained in the annual reports and any additional information requested by the commissioner, the commissioner shall evaluate the fees charged for the residential service contract to determine if they are reasonable in relation to the value of the claims made. The commissioner may order an adjustment of the fees if the commissioner determines that the fees are not reasonable in relation to the value of the claims made.

191—54.43 to 54.49 Reserved.

191—54.50(523C) Prohibited acts or practices.

54.50(1) Defamation. A licensed service company is hereby prohibited from making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure that person.

54.50(2) Boycott, coercion, and intimidation. A licensed service company is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

54.50(3) False statements. A licensed service company is prohibited from knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

54.50(4) False entries. A licensed service company is prohibited from knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of that person in any book, report or statement of that person.

54.50(5) Misrepresentation, false advertising, and unfair practices.

a. Unless licensed as an insurance company, a licensed service company may not use in its name, contracts, or literature, any of the words “insurance,” “casualty,” “surety,” “mutual,” or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company.

b. A licensed service company may not:

(1) Without the written consent of the residential customer, knowingly charge a residential customer for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

(2) Make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a residential service contract.

(3) Permit or cause the omission of any material statement in connection with the sale, offer to sell or advertisement of a residential service contract, which under the circumstances should have been made in order to make the statements that were made not misleading.

(4) Make, permit or cause any false or misleading statements, either oral or written, about the benefits or services available under the residential service contract.

(5) Make, permit or cause any statement or practice which has the effect of creating or maintaining a fraud.

(6) Make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any

assertion, representation, or statement with respect to the service contract industry or with respect to any service company which is untrue, deceptive or misleading.

c. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan and shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required.

191—54.51(523C) Orders. The commissioner may, by order, take actions which are necessary or appropriate for the protection of residential customers and to implement the purposes of the Act.

191—54.52(523C) Investigations and subpoenas.

54.52(1) The commissioner may:

a. Make private and public investigations within or outside of this state as the commissioner deems necessary to determine whether a person has violated any provision of the Act or any rule or order under it or to aid in the enforcement of the Act;

b. Require or permit any person to file a statement under oath or otherwise as the commissioner determines as to all of the facts and circumstances concerning the matter to be investigated; and

c. Publish information concerning any violation of the Act or any rule or order under it.

54.52(2) For the purpose of any investigation or proceeding under the Act, the commissioner, or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

54.52(3) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to a subpoena of the commissioner on the grounds that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate or subject that person to a penalty or forfeiture; but no individual may be prosecuted or subject to any penalty or forfeiture on account of any transaction, matter, or thing concerning which that person is compelled after claiming privilege against self-incrimination to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution for perjury or contempt committed in testifying.

191—54.53(523C) Audits.

54.53(1) The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a licensed service company for the purpose of verifying compliance with the Act and this chapter. When a licensee fails or refuses to produce the records for examination when requested by the commissioner, the commissioner shall have the authority to require, by a subpoena, the attendance of the licensee, or its representative, and any other witness(es) whom the commissioner deems necessary or expedient to examine and compel the licensee and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to compliance with the Act or this chapter.

54.53(2) Unless waived by the commissioner, the audit shall be paid for by the licensed service company.

These rules are intended to implement Iowa Code chapter 523C.

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